

In the Court of Appeals of the State of Alaska

Jimmy A Lampley,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-12646**

Order
Appellate Rule 217

Date of Order: **10/16/2019**

Trial Court Case No. **3PA-16-00276CR**

In July 2019, this Court remanded this case to the superior court for an evidentiary hearing. The superior court, however, recently notified this Court that the Appellant, Jimmy Aaron Lampley, failed to appear for the evidentiary hearing. Because Mr. Lampley failed to appear, the superior court issued a bench warrant. Because of Mr. Lampley's absence, the superior court is unable to comply with this Court's remand order.

For this reason, IT IS ORDERED:

1. Mr. Lampley's attorney, Michael Barber, is ordered to show cause why this Court should not dismiss this appeal because Mr. Lampley's whereabouts are unknown. *See White v. State*, 514 P.2d 814, 816 (Alaska 1973) (an appellate court has the authority to decline to consider the merits of the defendant's appeal when the whereabouts of a criminal defendant are unknown.)(citing *Stevens v. State*, 159 N.E. 834, 835 (Ohio App. 1927)). *Accord, Molinaro v. New Jersey*, 396 U.S. 365, 90 S.Ct. 498, 24 L.Ed.2d 586 (1970); *Ewers v. State*, 909 P.2d 373 (Alaska App. 1996).

2. Mr. Barber's response to this order to show cause is due on or before November 6, 2019.

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3. The State shall then have ten days to file a response to Mr. Barber's pleading, or to file a notice that the State will not file a response.

4. If Mr. Lampley's presence is secured before this Court takes further action in this appeal, the parties shall promptly notify this Court of this circumstance. In addition, if Mr. Lampley's presence is secured before this Court takes further action in this appeal, the superior court is authorized to proceed with the evidentiary hearing.

Entered at the direction of Chief Judge Allard.

Clerk of the Appellate Courts



Kyle Roberts, Deputy Clerk

cc: Court of Appeals Judges
Judge John Wolfe

Distribution:

Mail:

Barber, Michael L., Public Defender - Contract
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